

Decision **PROPOSED DECISION OF ALJ COLBERT (MAILED 8/2/18)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Los Angeles County Metropolitan Transportation Authority for an order authorizing the construction of two-track at-grade crossings for the Crenshaw/LAX Transit Corridor Project Light Rail Line across West 59th Street, Slauson Avenue, West 57th Street, West 54th Street, West 52nd Street, West 50th Street and across West 48th Street in the City of Los Angeles.

Application 13-01-012

DECISION DENYING THE PETITION FOR MODIFICATION OF DECISION 14-08-045

Summary

This Decision denies the Petition for Modification of Decision 14-08-045 which granted the Los Angeles County Metropolitan Transportation Authority authorization to construct seven two-track at-grade rail crossings for the Crenshaw/LAX Transit Corridor Project Light Rail Line (Project) across West 59th Street, Slauson Avenue, West 57th Street, West 54th Street, West 52nd Street, West 50th Street and across West 48th Street in the City of Los Angeles, filed by Ms. Chandra V. Mosley.

This proceeding is closed.

1. Background

The Los Angeles County Metropolitan Transportation Authority (LACMTA or Applicant) was created by the California State Legislature in order to design, build, and operate an efficient and safe transportation system in Southern California and to improve public transportation in the region. LACMTA is the successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission.

Chandra V. Mosley (Ms. Mosley or Petitioner) is a retired traffic officer and former employee of the City of Los Angeles who has resided in Los Angeles, California for the past 34 years. Ms. Mosley's residence is approximately one mile from the approved Project location on Crenshaw Boulevard.

On August 28, 2014, the California Public Utilities Commission (Commission) issued Decision (D.)14-08-045 and granted Applicant authorization to construct seven two-track at-grade rail crossings for the Crenshaw/LAX Transit Corridor Project Light Rail Line (Project) across West 59th Street, Slauson Avenue, West 57th Street, West 54th Street, West 52nd Street, West 50th Street and across West 48th Street in the City of Los Angeles.

LACMTA has constructed and operates several light rail transit (LRT) and subway lines in Southern California, including the Metro "Blue," "Green," "Red," "Gold" and "Exposition" lines.¹ The proposed Project is an 8.5 mile fixed guideway rail system that will begin at the southern terminus of the Metro Green Line and follow existing railroad right of way adjacent to Aviation Boulevard

¹ LACMTA Application (A.)12-11-018 at 2.

and Florence Avenue northeast to Crenshaw Boulevard.² From Crenshaw Boulevard, the line will travel north within the Crenshaw Boulevard right of way to the Exposition/Crenshaw Station located adjacent to the Metro Exposition Line.³ In addition to the seven two-track at-grade rail crossings, the Project will include grade separations (adjacent to the LAX south runway complex), overhead rail line (across Century Boulevard, Manchester Avenue, and La Cienega Boulevard), underground rail (across La Brea Avenue, between Victoria Avenue and 60th Street, and between 48th Street and Exposition Boulevard), eight⁴ transit stations, park and ride lots and maintenance facilities. As proposed, when travelling at-grade, trains will run parallel with traffic and be controlled by existing traffic signals.⁵

On March 4, 2013, the Crenshaw Subway Coalition (CSC) filed a Protest to the project arguing that LACMTA failed to prove that grade separation for the seven rail crossings was impracticable.⁶ CSC argued that because the Commission ruled in D.09-02-031 that the presence of a special population of school children required a grade separated track, the Commission should follow precedent and rule the seven crossings as impracticable.⁷ In its reply brief, LACMTA clarified that D.09-02-03 was not precedent setting since a subsequent decision, D.10-07-026 approved an at-grade crossing at the same location

² *Id.* at 3.

³ *Id.* at 2.

⁴ The number of transit stations has increased from six to eight since D.14-08-045 was issued; the current list of stations is available at https://www.metro.net/projects/crenshaw_corridor/.

⁵ June 14, 2013 (PHC) Transcript, 106:1-22.

⁶ Crenshaw Subway Coalition Protest, 4:11.

⁷ *Id.*, 5:14-15.

assessed in the previous decision, and another at-grade section of the Metro Gold Line adjacent to a school was separately approved by the Commission.⁸ In D.14-08-045, the Commission found that grade separation was not practicable nor in the public interest because the seven crossings could achieve adequate levels of safety when designed at-grade. The seven at-grade rail crossings were found to be in compliance with all applicable Commission safety rules, procedures, guidelines and criteria. The costs for implementing grade separation would be excessive and disproportionate to any enhancement of safety.

On February 26, 2016, Ms. Mosley filed a Petition for Modification (PFM) of D.14-08-045. In the PFM, Ms. Mosley raises safety concerns regarding the populations of school children and senior citizens within the direct vicinity of the Project. Specifically, Petitioner points to the seven private and public schools on Crenshaw Boulevard to the east and west of the proposed Project route. Accordingly, Petitioner requests that LACMTA make one or more of the following safety revisions: 1) grade separations at all seven intersections along the Crenshaw/LAX light rail line; 2) underground the rail line as previously recommended by the Commission in an initial review; or 3) construct an overhead rail line.

The Petition was filed more than a year after the issuance of D.14-08-045. Pursuant to Rule 16.4(d) of the Commission's Rules of Practice and Procedure, a PFM must be filed and served within one year of the effective date of a decision. If filed afterward, the petition must include an explanation for the delay. If the Commission finds that the delay is not justified, it may on that ground (alone)

⁸ LACMTA Reply to Protest at 7.

issue a summary denial of the petition. Ms. Mosley offers two reasons for filing the PFM after the one year deadline: 1) Petitioner was not made aware of the at-grade nature of the Project until June 27, 2015, due to LACMTA's inadequate public notice of the Project details; and 2) she had experienced a chronic and life-threatening health condition and ongoing hospitalization for at least three years coinciding with the timeline of the proceeding.

On March 24, 2016, LACMTA responded to the PFM and argued that Ms. Mosley's request should be denied for the following reasons: 1) members of the local community had ample opportunities to participate in planning for the Project including consideration of undergrounding; 2) LACMTA fully documented its proposal for at-grade crossings along Crenshaw Boulevard and the Commission appropriately considered and eventually approved the proposal; 3) the cost of undergrounding the Crenshaw Boulevard crossings would be substantially higher since LACMTA's assessment in 2014; and 4) Petitioner's excuses for the late submission of her petition are unpersuasive.

A Prehearing Conference (PHC) on the instant PFM was held on May 24, 2016. At the PHC, LACMTA argued that it repeatedly provided public notice of the Project between 2007 and 2011 as part of a comprehensive public outreach program.⁹ Specifically, Applicant contended that it released details regarding the at-grade nature of the crossings in the Fall of 2009 when it distributed its Draft Environmental Impact Report (DEIR), at which time the public was given ample opportunity to comment.¹⁰ In response to public request made by Los Angeles County Supervisor Mark Ridley-Thomas, LACMTA completed a

⁹ Prehearing Conference Testimony, RT 65:26-28.

¹⁰ RT 65:14-66:28.

detailed study of an undergrounding alternative. The alternative was ultimately not adopted in the Final Environmental Impact Report (FEIR) which was released in the Fall of 2011.¹¹ Applicant also stated that it distributed numerous flyers as well as direct mailings to residents and businesses within the immediate vicinity of the Project.

On July 1, 2016, the assigned Administrative Law Judge (ALJ) issued a Ruling, stating that “[i]n order to properly examine the merits of Petitioner’s complaints and request for modification, the Commission must fully understand the extent of LACMTA’s Project outreach program.”¹² The Ruling ordered Applicant to provide “the content of the flyers, direct mailings, and other information . . . as well as the specific dates on which those flyers were distributed.”¹³

On July 18, 2016, LACMTA filed a Response to the Ruling. The Applicant’s Response included a table providing an overview of community outreach documents and information distributed during the environmental review phase period (between October 2007 and September 2011). Applicant also submitted copies of the documents and information distributed between 2007 and 2011, details of the manner of distribution and the dates of the distributions.¹⁴

On August 5, 2016, LACMTA filed an opening brief arguing that

¹¹ RT 67:2-23.

¹² ALJ Colbert Ruling Requesting Additional Information, Setting Briefing Schedule and Denying Petitioner’s Motion to Correct the Pre-Hearing Conference Transcript.

¹³ *Id.*

¹⁴ LACMTA Response to ALJ Ruling at 2.

Ms. Mosley failed to comply with the Commission's Rules and that LACMTA's outreach gave the public sufficient notice of the proposed crossings. Applicant argued that under Rule 16.4(d), Ms. Mosley was required to demonstrate that it (LACMTA) did not provide adequate notice of the at-grade nature of the Project and that she had failed to meet that burden. LACMTA also contended that Ms. Mosley failed to show, as required by Rule 16.4(e), how she was affected by the Project any differently than any other community member involved in the earlier stages of the proceeding.¹⁵ Applicant reiterated its substantial community outreach during the planning phase of the Project which began in 2007.¹⁶ Additionally, the Applicant detailed its ongoing public outreach program for construction safety awareness that is offered to all schools and senior centers within a half-mile of the alignment of the Project.¹⁷ LACMTA concluded by stating that Ms. Mosley's safety concerns were similarly raised in the earlier proceedings, specifically through a Protest by CSC that was ultimately denied in D.14-08-045.¹⁸

Ms. Mosley also filed her brief on August 5, 2016, addressing her compliance with the Commission's Rules and further discussing her safety concerns for children and senior citizens in the community affected by the Project. Petitioner argued that she met the Rule 16.4(e) requirement of showing how the decision directly affected her by explaining that "[t]he components of this project led by LACMTA and the ability to prevent great bodily harm to our

¹⁵ LACMTA Brief at 7.

¹⁶ *Id.* at 9, 10.

¹⁷ *Id.* at 9, 12, 16.

¹⁸ *Id.* at 23.

community has caused this Petitioner deep personal anguish to know that LACMTA is not doing the right thing on behalf of our community and has ignored community members pleas.”¹⁹ Ms. Mosley also contended that LACMTA did not sufficiently notify the community of the at-grade rail crossings nor did LACMTA fully address the safety concerns raised before construction began.²⁰ Specifically, Petitioner argued that the at-grade information was revealed in phases and in general terms, was not disseminated to residents beyond the quarter-mile radius and only available to her community through one reference in a local newspaper.²¹ Petitioner also asserted that LACMTA was in compliance with an outdated 2003 Grade Crossing Policy for Light Rail Transit and therefore had not taken into account 2010 amendments to the policy that further evaluated ““subjective community considerations, such as safety.””²² Lastly, Petitioner referenced safety concerns from a letter sent by the Commission on October 28, 2009 after an initial review of the Project.²³

On August 15, 2016, LACMTA filed its reply brief which addressed Ms. Mosley’s justification for late filing and concerns about adequate notification and safety. Applicant contended that Ms. Mosley’s personal lack of notice was not indicative of insufficient outreach efforts, since other members within her community as well as a representative of her local community council were informed of the Project, engaged in the environmental review process, and

¹⁹ Petitioner Brief at 7.

²⁰ *Id.* at 6.

²¹ *Id.* at 3.

²² *Id.*

²³ *Id.* at 6.

participated in the proceeding.²⁴ Applicant further argued that it was only required to notify residents directly contiguous to the Project. Its effort to reach residents within a one-quarter mile radius of the alignment went beyond the required level of notice and thus was more than sufficient.²⁵ Additionally, LACMTA clarified that the amendments to the 2010 Grade Crossing Policy cited by Petitioner were those proposed in September 2010 but were not part of the amended motion approved by the LACTMA board in October 2010. The adopted revisions were not significantly different from the 2003 policy and were taken into serious consideration during the planning process, including safety related components.²⁶ Lastly, Applicant detailed how it worked with the Commission after receiving the October 28, 2009 letter in order to address the Commission's safety concerns.²⁷

On August 16, 2016, Ms. Mosley filed a reply brief, reaffirming her compliance with Rule 16.4(e) and continuing to deny the sufficiency of LACMTA's community outreach.

2. Relief Requested

Ms. Mosley requests that the Commission modify D.14-08-045 granting LACMTA authorization to construct seven two-track at-grade rail crossings for the Project. Petitioner raises various safety concerns associated with the at-grade Project and urges the Commission to require LACMTA make one or more of the following design changes: 1) grade separations at all seven intersections along

²⁴ LACMTA Reply Brief at 3 and 5.

²⁵ *Id.* at 4.

²⁶ *Id.* at 7 and 8.

²⁷ *Id.* at 9.

the Crenshaw/LAX light rail line, 2) underground the rail line as previously recommended by the Commission in an initial review, or 3) construct an overhead rail line.

3. Legal Standard and Discussion

Public Utilities (Pub. Util.) Code Section 1708 grants the Commission authority to “rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.” In order to make any changes to a decision or order, the Commission must provide proper notice to the parties and an opportunity to be heard.²⁸

We note that modifying an existing decision is an extraordinary remedy that must be exercised with care to keep with the principles of res judicata given that “Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.”²⁹

Rule 16.4 of the Commission’s Rules of Practice and Procedure governs the filing of petitions for modification. Rule 16.4 contains both procedural and substantive requirements.

We begin our analysis by examining the requirements of the Rule 16.4(d) which provides specific instruction to petitioners:

Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed,

²⁸ Pub. Util. Code § 1708.

²⁹ 4 CPUC2d 139, 149-150 (1980); *see also* D.15-05-004.

the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

Ms. Mosley does not comply with the Rule 16.4(d) requirements. She has failed to justify her delayed filing of the PFM. The Petitioner's assertions that she was not made aware of the at-grade nature of the Project until June 27, 2015 due to inadequate public notice as well as at least three years of a chronic and life-threatening health condition and ongoing hospitalization are not persuasive.

LACMTA has demonstrated that it provided sufficient notice of the Project; LACMTA has provided continual outreach programs commencing in 2007. This targeted outreach encompassed more than the number of residents. LACMTA was required to notify and successfully reached residents and Ms. Mosely's local community council. While Ms. Mosley's unfortunate health conditions may have affected her actual awareness of the at-grade details of the Project, such external factors affecting an individual's awareness are not in LACMTA's control and do not reflect the adequacy of LACMTA's outreach efforts. It is evident that others within the community were notified and participated in the environmental review process of the Project as well as the instant proceeding.

We find that LACMTA provided adequate notification and that Petitioner's delayed filing is not justified, and determine that a summary denial of the Petition is appropriate.

Even if Ms. Mosely's PFM were timely filed, it fails on the merits. Rule 16.4(e) provides, "If the petitioner was not a party to the proceedings in which the decision proposed to be modified was issued, the petition must state

specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier.”

Ms. Mosley does not comply with the Rule 16.4(e) requirements, as the rationale set forth in her PFM does not demonstrate how she is affected by the decision and/or justify why she did not participate in the earlier proceeding. Although Petitioner asserts that D.14-08-045 caused deep personal anguish because of her concerns for the safety of school children and seniors located near the Project, Petitioner fails to state specifically how she is affected by the decision, such as whether her own safety will be compromised or other ways she will be affected by the at-grade rail crossings. In her filings, Petitioner has never raised concerns for her own safety due to the Project. Furthermore, Petitioner’s filings do not discuss why she did not participate in the proceeding for the purposes of complying with Rule 16.4(e).

Although the PFM is summarily denied, the Commission has reviewed Petitioner’s request in adhering to its commitment to public safety. With respect to the level of risk for children and senior residents posed by the Project, we disagree with Ms. Mosley’s assessment that there is an unreasonable risk. D.14-08-045 is reasonable and adequately addresses Petitioner’s safety concerns. During the proceeding, CSC raised similar safety issues concerning the proximity of school children to the Project. The Commission determined that the seven proposed two-track at-grade crossings complied with all applicable Commission safety rules, procedures, guidelines and criteria.

After careful review of the PFM, we find no basis to change our findings and conclusions in D.14-08-045. The Decision reached the correct result, and we affirm it. Petitioner has not demonstrated good cause to modify D.14-08-045. LACMTA’s authorization to construct the seven at-grade crossings is upheld.

4. Comments on Proposed Decision

The proposed decision (PD) of ALJ Colbert in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 21, 2018 by the Los Angeles County Metropolitan Transportation. There were no Reply Comments filed. In response to comments minor typographical changes have been made to the PD.

5. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and W. Anthony Colbert is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On August 28, 2014, the Commission adopted D.14-08-045 and granted Applicant authorization to construct seven two-track at-grade rail crossings for the Crenshaw/LAX Transit Corridor Project Light Rail Line (Project) across West 59th Street, Slauson Avenue, West 57th Street, West 54th Street, West 52nd Street, West 50th Street and across West 48th Street in the City of Los Angeles.

2. Applicant has constructed and is operating several light rail transit (LRT) and subway lines in Southern California, including the Metro "Blue," "Green," "Red," "Gold" and "Exposition" lines.

1. The proposed Project is an 8.5 mile fixed guideway rail system that will begin at the southern terminus of the Metro Green Line and follow existing railroad right of way adjacent to Aviation Boulevard and Florence Avenue northeast to Crenshaw Boulevard and will then extend north to the existing Metro Exposition Line station at Crenshaw Boulevard."

2. On February 26, 2016, Ms. Mosley filed a Petition for Modification of D.14-08-045.

3. Petitioner is a retired traffic officer and former employee of the City of Los Angeles, and has resided in Los Angeles, California, for the past 34 years.

4. Petitioner resides approximately one mile from the approved Crenshaw/LAX Transit Corridor Project Light Rail Line (Project) location.

5. Petitioner states two reasons for filing the Petition for Modification after the one year deadline: 1) Petitioner was not made aware of the at-grade nature of the Project until June 27, 2015, due to LACMTA's inadequate public notice of the Project details; and 2) she had experienced a chronic and life-threatening health condition and ongoing hospitalization for at least three years coinciding with the timeline of the proceeding.

6. Petitioner requests the Commission to modify D.14-08-045 granting LACMTA authorization to construct seven two-track at-grade rail crossings for the Project.

7. Petitioner requests that LACMTA make one or more of the following safety revisions: 1) grade separations at all seven intersections along the Crenshaw/LAX light rail line; 2) underground the rail line as previously recommended by the Commission in an initial review; or 3) construct an overhead rail line.

8. Applicant argued that Petitioner's request should be denied for the following reasons: 1) members of the local community had ample opportunities to participate in planning for the Project including consideration of undergrounding; 2) LACMTA fully documented its proposal for at-grade crossings along Crenshaw Boulevard and the Commission appropriately considered and eventually approved the proposal; 3) the cost of undergrounding the Crenshaw Boulevard crossings would be substantially higher since

LACMTA's assessment in 2014; and 4) Petitioner's excuses for the late submission of her petition were unpersuasive.

9. LACMTA contends that there was sufficient notice by providing evidence of its continual outreach programs beginning in 2007 which targeted more residents than LACMTA was required to notify and successfully reached residents and a community council member within Ms. Mosley's community.

Conclusions of Law

1. Rule 16.4 of the Commission's Rules of Practice and Procedure governs the filing of petitions for modification.

2. Rule 16.4(d) states:

Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

3. Rule 16.4(e) states, "If the petitioner was not a party to the proceedings in which the decision proposed to be modified was issued, the petition must state specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier."

4. Petitioner's justification for her delayed filing does not meet the requirements of Rule 16.4(d).

5. Petitioner does not meet the requirements of Rule 16.4(e) of showing how she was affected by the decision and why she did not participate in the proceeding earlier.

6. Petitioner has not demonstrated good cause to modify D.14-08-045.

7. The Petition for Modification of D.14-08-045 should be denied.

8. This order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 14-08-045 by Chandra V. Mosley is denied.

2. Application 13-01-012 is closed.

This order is effective today.

Dated _____, at San Francisco, California.